

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000529-001 DT

12/16/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

RANCHO SANTA FE THRIFT & LOAN
ASSOCIATION

JON R HULTGREN

v.

TINA HOLDER (001)

TINA HOLDER
140 E HAMPTON AVE
MESA AZ 85210

JUDGE GOTTSFIELD
REMAND DESK-LCA-CCC
SOUTH MESA-GILBERT JUSTICE
COURT

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). This case has been under advisement and the Court has considered and reviewed the record of the proceedings from the South Mesa-Gilbert Justice Court and the memoranda submitted by the parties.

On July 13, 2001, Appellee, Rancho Santa Fe Thrift & Loan Association ("Rancho") filed a contract action against Appellant ("Holder") to recover a deficiency remaining after sale of a vehicle that secured a loan to Holder. After a bench trial, the Honorable Tom Freestone entered Judgment in favor of Rancho and against Holder for the deficiency. Holder appealed the decision and on October 23, 2002, the Honorable Robert Gottsfield reversed and remanded the case to the trial court for a new trial in accordance with his opinion. On April 3, 2003, this matter was again tried before Judge Freestone after which he entered Judgment in favor of Rancho and against Holder. Holder appeals from the second trial of this matter. Appellant contends that the trial court misapplied the law and did not follow the mandate given by Superior Court Judge Gottsfield.

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Standard of Review

The issues in this case concern whether on retrial, the Justice Court followed the mandate issued by Judge Gottsfield after the first appeal of this matter. On appeal from a trial in the justice court, this Court reviews issues of law *de novo*.¹ However, “if an appellate court has ruled upon a legal question and remanded for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case.”² Accordingly, this Court’s review is limited to the question whether Judge Freestone conducted and decided the case in accordance with Judge Gottsfield’s mandate. This Court is bound, as was the trial court, by Judge Gottsfield’s clear and articulate rulings regarding the legal issues surrounding this case.

Factual and procedural background

Appellant and Andrew Mader purchased a 1993 Mercury Sable from Berge Ford in 1997. They financed approximately \$10,000 of the purchase price at 19% annual interest rate secured by the vehicle.³ Berge Ford assigned the contract to Appellee Rancho.⁴ Sometime thereafter, Holder stopped making payments on the loan and talked with Mr. Linn Brown, Rancho’s employee, in an attempt to resolve the delinquent status of the account.⁵ In November, 1998, Holder returned the car to Appellee with the understanding that by voluntarily returning the vehicle, she would not be held responsible for any delinquency.⁶ The car was resold in February, 1999.⁷ Holder had no further contact with Rancho until July 2001, when Rancho filed suit against Holder for the deficiency.⁸ After a bench trial, Judge Freestone entered judgment in favor of Rancho and against Appellant. Appellant appealed Judge Freestone’s judgment on the grounds of laches, improper hearsay and failure to rule on reliance defense.⁹

Judge Gottsfield issued his order on the appeal on November 6, 2002, in which he ordered that “the judgment below is reversed and vacated and the matter remanded to the Justice Court to conduct a new trial in accordance with this Opinion.”¹⁰ In his Opinion, Judge Gottsfield reversed on three separate grounds. First, he concluded that “laches is a viable defense available to debtors” and that the trial court must examine and make a good faith determination regarding

¹ *J.C. Penney v. Lane*, 197 Ariz. 113, 114, 3 P.3d 1033, 1034 (App. 1999).

² *Johnson v. Mofford*, 193 Ariz. 540, 546, 975 P.2d 130, 136 (App. 1998).

³ Proceedings April 3, 2003, Exhibit 1 (“Exhibit ___”).

⁴ Transcript of Proceedings, April 3, 2003 (“Transcript”), page 9.

⁵ Transcript, page 36.

⁶ *Id.*

⁷ Transcript, page 17.

⁸ Transcript, page 36.

⁹ *Rancho Santa Fe Thrift & Loan Association v. Tina Holder*, CV 2002-091764, Minute Entry, November 6, 2002 (“Minute Entry”).

¹⁰ Minute Entry, page 3.

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the debtor's allegations of prejudice caused by the seller's delay.¹¹ Second, he concluded that the affidavit of Mr. Brown was admitted in error because it was "clearly inadmissible hearsay."¹² Third, Judge Gottsfield concluded that parties to a contract are free to modify a written agreement or contract by subsequent oral agreement, that a modification can be found if one with apparent authority makes a promised modification, and that the lower court must consider that legal option.¹³

On April 3, 2003, the matter was again tried before Judge Freestone, and again, he entered judgment in favor of Rancho and against Holder for the deficiency.¹⁴ Holder timely filed this appeal in which she contends that Judge Freestone erred in its ruling regarding the laches doctrine as applied to this case and further erred in failing to rule on the reliance issue and failing to consider the legal issue of oral modification of a written contract and the issue of apparent authority to modify a contract.¹⁵

Discussion

Judge Gottsfield decided that laches is available to creditors as a defense for prejudice resulting from a creditor's delay in bringing an action even though the action is filed within the period of limitations.¹⁶ In addition, he said that "the court has an obligation to examine the debtor's allegations of her prejudice caused by the seller's delay and make a good faith determination whether the delay by the creditor in suing on the deficiency was of such prejudice that it is unjust to let the case proceed. . . ."¹⁷ In addition, he directed the trial court to determine whether the creditor had a "valid reason for such a long delay in filing suit in this case."¹⁸

Holder argued that she talked with Mr. Brown over a few months period and that he told her that if she voluntarily returned the vehicle, Rancho would not pursue her for any additional money.¹⁹ She also testified that after she turned in the car, she did not hear from Rancho again until Rancho filed suit against her, two and one-half years after the car was sold.²⁰ Holder also testified that because of the delay in bringing a claim against her, she lost evidence, including her

¹¹ Minute Entry, ¶ 4.

¹² Minute Entry, ¶ 5.

¹³ Minute Entry, ¶¶ 6, 8.

¹⁴ Transcript, page 58. The judgment is in the amount of \$7,262.43 plus costs and attorneys fees.

¹⁵ Appellant Memorandum, June 11, 2003 (Appellant's Brief") pages 2, 3. Mr. Brown testified at the second trial and the hearsay issue is not part of this appeal.

¹⁶ Minute Entry, ¶ 4. Judge Gottsfield cited *Dicenso v. Bryant Air conditioning Co.*, 131 Ariz. 605, 643 P2d 701 (App. 1982) and *Sotomayor v. Burns*, 199 Ariz. 81, 13 P.3d 1198 (2000) with respect to the laches defense in Arizona.

¹⁷ Minute Entry, ¶ 4.

¹⁸ *Id.*

¹⁹ Appellant's Brief, pages 16,17.

²⁰ Transcript, page 36.

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notes of her conversations with Mr. Brown and his promise to her. In addition, she gave up the opportunity to sell the car herself or to try and make other arrangements regarding the debt.²¹

Rancho argues here, as it did to the trial court, that laches does not apply to delay in filing a lawsuit if the action is filed within the statute of limitations.²² According to Appellee, “Judge Gottsfield . . . got off the track” in his decision about the laches defense.²³ Appellee told the trial court that “in Arizona, laches applies after a lawsuit is filed, not before.”²⁴ Appellee argues here, as it did to the trial court, that Judge Gottsfield misapplied the cited case law.²⁵ Rancho’s argument is misplaced. The trial court is “not free to deviate from a mandate giving specific directions.”²⁶ More important than Rancho’s misplaced argument, the trial court ignored the mandate and concluded that “unless they go outside of the statute of limitations . . . , it’s a valid case before the Court.”²⁷ The trial court’s failure to follow the mandate is error.

Judge Gottsfield also required the trial court to make a “good faith determination” with respect to the defendant’s allegations of prejudice. Defendant alleged that because of the delay, she was not able to produce witnesses that could help her defend against the lawsuit and was not able to produce certain evidence including her contemporaneous notes of her conversations with Mr. Brown. The only claim of prejudice that the trial court addressed was that regarding her destroyed notes. With respect to the notes, the trial court said that the notes were not significant because they were just her notes and were not “a signed declaration from the company saying we absolve you for any further debt of this vehicle once you turn it over.”²⁸ In this statement, the trial court ignores the mandate in two respects. First, the trial court appears to conclude that the contract cannot be modified except by written modification despite Judge Gottsfield’s specific direction to the contrary. Second, the trial court’s dismissal of the notes cannot be considered a good faith determination of her allegation of prejudice. The trial court concedes that it is faced with conflicting testimony about what Mr. Brown said to Holder. In light of that conflicting testimony, the Appellant’s recorded recollection, if available, would appear to have particular significance. The trial court did not make a good faith determination of the Appellant’s allegations of prejudice caused by the creditor’s delay in suing on the deficiency.

²¹ Appellant’s Brief, pages 16,17.

²² Appellee’s Memorandum, June 23, 2003 (“Appellee’s Brief”) pages 3-5.

²³ Transcript, page 49. “[Laches] doesn’t apply to this case, with all due respect to Judge Gottsfield. . . .” Transcript, page 52. “[T]he only reason this case was kicked back here was Judge Gottsfield’s mistaken belief that laches applied....” Transcript, page 55.

²⁴ Transcript, page 50.

²⁵ Appellee’s Brief, pages 3-4; Transcript, pages 50, 51. Both parties argue extensively regarding the question whether laches applies to delay before a lawsuit is filed. This Court need not consider those arguments. Judge Gottsfield’s ruling is the law of the case with respect to the laches defense. That decision is binding on *both* the trial court and on this Court in this appeal. *Paul R. Peterson Const., Inc. v. Ariz. State Carpenters Health and Welfare Trust Fund*, 179 Ariz. 474, 478, 880 P.2d 694, 698 (App. 1994).

²⁶ *Johnson v. Mofford*, 193 Ariz. at 546, 975 P.2d at 136.

²⁷ Transcript, page 38.

²⁸ Transcript pages 57, 58.

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Rancho's reason for its delay in filing suit in this case is that it was not sure whether it had a correct address for Holder. Appellee testified that notices it mailed to Mr. Mader were returned undeliverable and it therefore questioned whether Holder lived at that address. The trial court accepted that explanation as a valid reason for the delay in filing suit in this case.²⁹ Although, Appellant questions the veracity of this explanation, it cannot be said that the trial court ignored this aspect of the court order.

Judge Gottsfield also directed that the trial court decide the case consistently with the Arizona law that a written contract can be modified by subsequent oral agreement even where the agreement contains a provision that it can only be modified by a writing.³⁰ However, the trial court apparently rendered its decision under the belief that a written contract can only be modified in writing.³¹

Because a contract can be subsequently modified orally, Judge Gottsfield directed the court to decide whether Mr. Brown had actual or apparent authority to modify the contract because the employer "cloaks him with the apparent authority to do whatever is necessary to recover vehicles."³² Mr. Brown testified that as the collection manager he controls the delinquency and also the repossessions for Rancho.³³ Mr. Brown testified that he is "basically the final word on who gets repossesses and if we're going to work with the customer or not."³⁴ It appears that Mr. Brown is held out to the public as having the authority to do whatever is necessary to recover vehicles. However, the trial court did not address whether Mr. Brown had had such authority. Appellee argued that "Mr. Brown didn't make those promises. And even assuming those promises had been made, they had to be in writing."³⁵ As noted, the trial court decided that any modifications had to be in writing. Consistent with that conclusion, the trial court simply did not make any decision regarding whether Mr. Brown had apparent authority to promise Appellant that Rancho would not pursue the delinquency, and if so, whether Appellant relied on such a promise to her detriment. In that regard, the trial court failed to follow the mandate.

Appellant urges this Court "to determine the credibility of the witnesses based on the transcript" because the trial court did not address the issues.³⁶ On matters of credibility, the reviewing court ordinarily defers to the trier of fact.³⁷ This court will not determine whether Mr. Brown promised Appellant that Rancho would not pursue the delinquency if she turned in the vehicle because it is strictly a matter of credibility, as acknowledged by Judge Gottsfield in his

²⁹ Transcript, page 57.

³⁰ Minute Entry, ¶¶ 6, 8.

³¹ Transcript, page 57, 58.

³² Minute Entry, ¶ 8.

³³ Transcript, page 25.

³⁴ Transcript, pages 25-26.

³⁵ Transcript, page 56.

³⁶ Appellant's Brief, page 15.

³⁷ *Anamax Mining Co. v. Arizona Dept. of Economic Security*, 147 Ariz. 482, 486, 711 P.2d 621 (App. 1985).

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order. The Court concludes, however, that the trial court failed to comply with the mandate in several respects, and that this case must be remanded, once again, for a new trial.

Conclusion

The trial court ignored Judge Gottsfeld's order in that it decided that laches is not available as a defense if an action is filed within the statute of limitations. It further erred in failing to make a good faith determination of the allegations of prejudice caused by the creditor's delay in filing suit. The trial court incorrectly and contrary to the mandate concluded that the written contract at issue could only be modified by written agreement. Because of that error, the trial court failed to determine the issues relating to reliance: whether Appellee's employee had apparent authority to modify the contract and whether Appellant relied to her detriment on that authority. The trial court's deviation from the mandate constitutes error, and this case will be remanded for a new trial.³⁸

IT IS THEREFORE ORDERED reversing the judgment of the South Mesa- Gilbert Justice Court in this case.

IT IS FURTHER ORDERED remanding this case back to the South Mesa- Gilbert Justice Court for a new trial and proceedings consistent with this opinion.

IT IS FURTHER ORDERED denying the Appellee's request for attorney's fees and costs.

IT IS FURTHER ORDERED waiving the requirements of Rule 58, Arizona Rules of Civil Procedure, which require service of forms of judgment. This court will sign the minute entry opinion as a final order and judgment in this case as Appellant is appearing pro se.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

³⁸ Johnson v. Moffor, 193 Aiz. At 546, 975 P.2d at 136.